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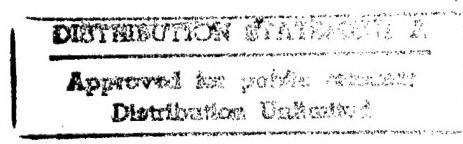
AGREEMENT

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(DOD 3210.6-R)

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OFFICE OF THE DIRECTOR OF
DEFENSE RESEARCH AND ENGINEERING
WASHINGTON, DC 20301-3040

9 AUG 1996

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
CHIEF OF NAVAL RESEARCH
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTOR, CONTRACTS MANAGEMENT OFFICE, DARPA
CHIEF, POLICY OFFICE, DISA
DEPUTY DIRECTOR (ACQUISITION), DLA
DEPUTY DIRECTOR (ACQUISITION AND LOGISTICS), DMA
DIRECTOR, ACQUISITION MANAGEMENT, DNA
CHIEF, RESEARCH AND TECHNOLOGY, NSA
DIRECTOR, OFFICE OF ECONOMIC ADJUSTMENT, OUSD(A&T)
DIRECTOR, RESEARCH ADMINISTRATION, USUHS
ASSISTANT INSPECTOR GENERAL (POLICY AND OVERSIGHT)

SUBJECT: Defense Grant and Agreement Circular (DGAC) 94-5

This is the fifth DGAC under the interim-guidance, DoD Grant and Agreement Regulations (DoDGARs) that were issued in February, 1994. It clarifies that DoD policy is to use the 1993 version of OMB Circular A-110 for awards to institutions of higher education and other nonprofit organizations, and to stop using the 1976 version of the Circular for those classes of recipients.

To do so, this DGAC revises paragraph §31.10(a)(1)(i) of the interim-guidance DoDGARs. That paragraph previously cited the 1976 version of A-110 as the standard for administering awards to universities and other nonprofit entities, pending DoD's formal implementation of the 1993 version of the Circular. It allowed grants officers, if recipients consented, to incorporate terms and conditions providing for administration of awards in accordance with the updated A-110. As revised by this DGAC, the paragraph states that grants officers shall provide for administration of awards to universities and other nonprofit entities in accordance with the 1993 version of A-110.

This DGAC also makes conforming changes to paragraph §34.2(a), paragraph §37.12(a)(1), and introductory language of section 37.13 in Parts 34 and 37 of the interim-guidance DoDGARs. The changed paragraphs clarify that the coverage in those parts for awards to commercial organizations will continue to be based on the 1976 version of OMB Circular A-110, as an interim measure,

pending codification of those parts of the DoDGARs in the Code of Federal Regulations.

Please forward this DGAC to offices in your Department or Agency that award or administer grants or agreements. They may remove pages 31-1 through 31-4, 34-1 and 34-2, and 37-5 through 37-8 from the interim-guidance DoDGARs, and insert the attached pages in lieu thereof.



Jasper C. Lupo
Director for Research

Attachment

PART 31-ADMINISTRATION OF DoD GRANTS AND AGREEMENTS**Subpart A-General Matters and Field Administration Services**

S31.1 Scope. This part prescribes policies and procedures for administering grants and cooperative agreements.

S31.2 Policy.

(a) DoD policy is to minimize unnecessary duplication of field administration services, and relieve the concomitant increased burdens on recipients, when recipients of grants and agreements also perform Federal contracts. Therefore, DoD offices assigned cognizance over the performance of contract administration services for selected organizations or classes of organizations shall also perform administration services for grants and cooperative agreements with such organizations. These offices, referred to in this part as "grants administration offices," are (see the "DoD Directory of Contract Administration Services Components," DLAH 4105.4,¹ for specific addresses of regional offices):

(1) Regional offices of the Office of Naval Research, for grants and agreements with:

(i) Institutions of higher education and laboratories affiliated with such institutions, to the extent they are treated in accordance with the university cost principles in OMB Circular A-21.²

(ii) Nonprofit organizations that are subject to the nonprofit cost principles in OMB Circular A-122,³ if their principal business with the Department of Defense is research and development.

(2) Regional offices of the Defense Contract Management Command, for grants and agreements with all other entities, including:

(i) Commercial organizations.

(ii) Nonprofit organizations identified in Attachment C of OMB Circular A-122 that are subject to commercial cost principles in 48 CFR 31.

¹ Copies may be obtained from Defense Logistics Agency, Publications Distribution Division (DASC-WP), Cameron Station, Alexandria, VA 22304-6100.

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

³ See footnote 2 to section 31.2(a)(1)(i).

(iii) Nonprofit organizations subject to the nonprofit cost principles in OMB Circular A-122, if their principal business with the Department of Defense is other than research and development.

(iv) State and local governments.

(b) Contracting activities shall use cross-servicing arrangements whenever practicable and, to the maximum extent possible, delegate responsibility to the cognizant grants administration offices for field administration of grants and cooperative agreements. This will minimize the extent to which recipients of grants and agreements are unnecessarily subjected to duplicative reviews by multiple contracting activities.

§31.3 Grants administration office functions. Responsibilities of cognizant grants administration offices shall be:

- (a) Performing pre-award surveys, when requested by grants officers.
- (b) Performing property administration services.
- (c) Reviewing recipients' financial management, property management and purchasing systems.
- (d) Determining that recipients have drug-free workplace programs, as required under 32 CFR 25.
- (e) Ensuring timely submission of required reports.
- (f) Executing administrative closeout procedures.
- (g) Performing other administration functions as delegated by applicable cross-servicing agreements or letters of delegation.

Subpart B-Administrative Requirements

§31.10 Requirements in other parts. In addition to the procedures in this part, administrative requirements for grants and cooperative agreements are specified in the following portions of the DoD Grant and Agreement Regulations:

(a) Domestic recipients.

(1) Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified by:

(i) The current version of OMB Circular A-110 (58 FR 62992, November 29, 1993), for grants and agreements performed by domestic institutions of higher education and nonprofit organizations. Grants officers shall incorporate terms and conditions that provide for recipients' administration of awards in accordance with that version of the OMB Circular, until the

Department of Defense's implementation of the Circular is formally codified (at which time terms and conditions shall specify administration in accordance with the codified implementation of the Circular).

(ii) 32 CFR 33, the Department of Defense implementation of OMB Circular A-102,⁴ for grants and cooperative agreements performed by State or local governments.

(iii) 32 CFR 34 for commercial organizations, for those DoD Components' programs where awards to commercial organizations are permitted. Note that 32 CFR 34 in this interim-guidance version of the DoD Grant and Agreement Regulations will continue at this time to be based upon the previous version of OMB Circular A-110 (issued July 30, 1976), notwithstanding the use of the current version of that Circular for grants and agreements with domestic institutions of higher education and nonprofit organizations [see paragraph (a)(1)(i) of this section].

(2) Special requirements are specified in Subpart B of 32 CFR 37 for use on an exception basis to administer cooperative agreements under 10 U.S.C. 2371. Note that the requirements for commercial organizations in the interim-guidance version of 32 CFR 37 will continue at this time to be based upon the previous version of OMB Circular A-110, as will those in 32 CFR 34 [see paragraph (a)(1)(iii) of this section].

(b) Foreign recipients. DoD Components shall use the administrative requirements specified in paragraph (a)(1) of this section, to the maximum extent practicable, for grants and cooperative agreements with foreign recipients.

\$31.11 Metric system of measurement. [Reserved].

⁴ See footnote 2 to section 31.2(a)(1)(i).

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PART 34-ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH COMMERCIAL ORGANIZATIONS

§34.1 Purpose. This part prescribes standard administrative requirements for grants and cooperative agreements with commercial organizations, for DoD programs where awards to commercial organizations are permitted.

§34.2 Policy.

(a) General. The interim-guidance version of this part bases administrative requirements for grants and agreements with commercial organizations upon the previous version of OMB Circular A-110¹ (issued July 30, 1976), notwithstanding the use of the current version of that Circular for grants and agreements with institutions of higher education and nonprofit organizations [see 32 CFR 31.10(a)(1)(i)]. Grants officers shall use the 1976 version of Circular A-110 for grants and cooperative agreements with commercial organizations, with the following clarifications, additions, and exceptions:

(1) Cash depositories, bonding and insurance, records retention, and program income. Grants officers shall apply the provisions of Attachments A, B, C, and D of OMB Circular A-110.

(2) Cost sharing and matching. Grants officers shall apply the requirements of Attachment E of OMB Circular A-110, except that:

(i) Recipients may use their independent research and development (IR&D) funds as cost sharing or matching for a grant or cooperative agreement. In such cases, the IR&D contributions must meet all criteria other than paragraph 3.b.(5) in Attachment E to OMB Circular A-110. Use of IR&D as cost sharing is permitted, whether or not the Government decides at a later date to reimburse any of the IR&D as allowable indirect costs under the commercial cost principles in 48 CFR 31.

(ii) Real property or nonexpendable personal property purchased with recipients' funds may be included as recipients' cost sharing or matching, if recipients notify grants officers in advance that such property is being included. To be included, the property must meet the general requirement for recipients' contributions--they may count as cost sharing or matching to the extent that they are used for authorized purposes of the agreement, consistent with applicable cost principles.

(3) Standards for financial management systems. The standards in Attachment F of OMB Circular A-110 shall apply. To the extent that they comply with these minimum standards, recipients shall be allowed and encouraged to use financial

¹ Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

management systems already established for doing business in the commercial marketplace.

(4) Financial reporting, program monitoring, and program reporting. Grants officers may apply the provisions of Attachments G and H of OMB Circular A-110, or may include equivalent technical and financial reporting requirements that ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(i) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status.

(A) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(B) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original grant or agreement; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(C) When grants officers previously authorized advance payments [pursuant to paragraph (a)(5) of this section], they should consult with the program manager and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(ii) A final report that addresses all major accomplishments under the agreement.

(5) Payment requirements. Attachment I of OMB Circular A-110 shall apply, except that reimbursements, not advance payments, are the preferred method of payment for commercial organizations (notwithstanding paragraphs 3, 4 and 5 of Attachment I). Advance payments may be used in exceptional circumstances, subject to the following conditions:

(i) The grants officer, in consultation with the program manager, judges that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the agreement (e.g., as startup funds for a project being performed by a newly formed company). The rationale for the judgment shall be documented in the award file.

(ii) Recipients and the DoD Component maintain procedures to ensure that minimum time elapses between the

(i) A general description of the cooperative agreement or other transaction, including the technologies for which advanced research is provided for under such agreement.

(ii) The potential military and, if any, commercial utility of such technologies.

(iii) The reasons for using a cooperative agreement or other transaction, rather than a contract or grant, to provide support for such advanced research.

(iv) With respect to payments, if any, under the authority of 10 U.S.C. 2371(a):

(A) The amounts that were received by the Federal Government in connection with such cooperative agreement or other transaction during the fiscal year covered by the report.

(B) The amounts that were credited to each account established under 10 U.S.C. 2371(d).

(2) In the format specified by DTIC.

(3) In accordance with the schedule specified by DTIC.

(c) Report control symbol. The information required by 10 U.S.C. 2371(e) and the "Interim Guidance for Military Departments and Advanced Research Projects Agency on Grants, Cooperative Agreements and Other Transactions" is reported to the the Work Unit Information Summary Database at DTIC, which is assigned report control symbol DD-A&T(A)1936.

Subpart B-Administration of Agreements Under 10 U.S.C. 2371

§37.10 Purpose of this subpart. This subpart prescribes administrative requirements for "cooperative agreements under 10 U.S.C. 2371."

§37.11 Consortia. A cooperative agreement with a consortium of legal entities (which may be any combination of commercial organizations, academic institutions, other nonprofit organizations, and/or governmental entities), shall be administered as follows:

(a) If the consortium is incorporated or otherwise a legally responsible entity and the agreement is with the consortium, the agreement shall be administered in accordance with the requirements in section 37.12 or 37.13 of this subpart applicable for the particular type of entity (e.g., a nonprofit organization).

(b) If the consortium is not a legally responsible entity and the agreement is signed by each consortium member [see section 37.5(b) of this part], each consortium member shall administer its portion of the agreement in accordance with the applicable requirements in section 37.12 or 37.13 of this subpart.

§37.12 Universities, other nonprofit organizations, and State and local governments.

(a) "Cooperative agreements under 10 U.S.C. 2371" shall be administered in accordance with 32 CFR 31.10(a), which specifies that:

(1) Agreements with universities and other nonprofit organizations shall be administered in accordance with the current version of OMB Circular A-110 (58 FR 62992, November 29, 1993). Grants officers shall incorporate terms and conditions that provide for recipients' administration of awards in accordance with that version of the OMB Circular, until the Department of Defense's implementation of the Circular is formally codified (at which time terms and conditions shall specify administration in accordance with the codified implementation of the Circular).

(2) Agreements with State and local governmental organizations shall be administered in accordance with 32 CFR 33, the Department of Defense implementation of OMB Circular A-102.²

§37.13 Commercial organizations. To the maximum extent practicable, "cooperative agreements under 10 U.S.C. 2371" shall be

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

administered in accordance with 32 CFR 34. In keeping with the intent of 10 U.S.C. 2371 to help remove barriers to integrating the defense and civilian sectors of the nation's technology and industrial bases, grants officers may, in some cases, use alternative provisions described in this section when those specified in 32 CFR 34 would force changes in a commercial organization's normal business practices, without adding commensurate value in terms of improved stewardship for appropriated funds. The provisions in 32 CFR 34 may be tailored by use of the following (note that references to OMB Circular A-110 are to the previous version, issued in 1976, notwithstanding the use of the current version of that Circular for awards to institutions of higher education and nonprofit organizations). Also note that, for those subjects not specifically addressed below, administration shall be in accordance with 32 CFR 34):

(a) Program Income. Provisions of Attachment D to OMB Circular A-110 apply, as provided in 32 CFR 34.1(a)(1). Grants officers must use care in selecting one of the three methodologies for use of program income that are described in Attachment D (deduction, addition, or augmentation of recipients' cost sharing), to ensure that recipients continue to comply throughout the project with cost sharing or matching requirements established in accordance with section 37.3(b)(2) of this part.

(b) Cost sharing and matching. Provisions of 32 CFR 34.2(a)(2) apply. Recipients' contributions may count as cost sharing or matching only to the extent that they are used for authorized purposes of the agreement, consistent with applicable cost principles [see paragraph 37.13(g) of this section].

(c) Standards for financial management systems. Whenever possible, grants officers shall apply the standards for financial management systems in 32 CFR 34.2(a)(3) (i.e., Attachment F of OMB Circular A-110) to agreements under 10 U.S.C. 2371 with commercial organizations. Where application of those financial management standards would require changes to recipients' established accounting systems, grants officers may use alternative approaches in "cooperative agreements under 10 U.S.C. 2371." As a minimum, such alternative approaches shall, as conditions of the cooperative agreement, provide that:

(1) Recipients have and maintain established accounting systems that:

(i) Comply with Generally Accepted Accounting Principles.

(ii) Control and properly document all cash receipts and disbursements.

(2) Recipients maintain adequate records to account for Federal funds received and recipients' cost sharing or matching that is required under the agreement.

(d) Financial reporting, program monitoring, and program reporting. Grants officers may use the alternative provided in 32 CFR 34.2(a)(4) to the standard approach in Attachments G and H of OMB Circular A-110. In addition, when a "cooperative agreement under 10 U.S.C. 2371" has been structured around payable milestones, the agreement may also require submission of reports that describe the successful completion of payable events [see paragraph 37.13(e)(3) of this section], to serve as the basis for approval of payments by the agreement administrator.

(e) Payment methods. The agreement may provide for:

(1) Cost reimbursement.

(2) Advance payments, under the conditions specified in of 32 CFR 34.2(a)(5)(i), (ii), and (iii).

(3) Payments based on payable milestones.. These are payments according to a schedule that is based on predetermined measures of technical progress or other payable milestones. This approach relies upon the fact that, as research progresses throughout the term of the agreement, observable activity will be taking place. At the completion of each predetermined activity, the recipient will submit a report or other evidence of accomplishment to the program manager. The agreement administrator may approve payment to the recipient, after receiving validation from the program manager that the milestone was successfully reached.

(f) Revision of financial plans. For agreements under 10 U.S.C. 2371, grants officers may waive all but two of the requirements in Attachment J of OMB Circular A-110, under which recipients must request prior approval before deviating from budget and program plans that were approved during the award process. Two may not be waived--cooperative agreements must include terms requiring a recipient to immediately request approval from the agreement administrator when there is reason to believe that within the next seven days a revision will be necessary for either of the following reasons:

(1) A change in scope or objective of a project or program (even if there is no associated budget revision requiring prior approval).

(2) A need for additional government funding.

(g) Cost principles. Whenever possible, grants officers shall apply the cost principles in 48 CFR 31 and 48 CFR 231, as provided in 32 CFR 34.2(a)(6), to agreements under 10 U.S.C. 2371 with commercial organizations. Where compliance with those cost principles would require changes to recipients' established cost accounting systems, grants officers may use an alternative